

**(1979) 03 PAT CK 0005**  
**In the Patna High Court**  
**Case No : C.R. No. 1181 of 1977**

Jagarnath Dubey and Others

APPELLANT

Vs

Ram Kripal Tewary and Others

RESPONDENT

**Date of Decision :** 19-03-1979

**Acts Referred:**

Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 — Section 3(1), 4(c)

**Citation :** (1979) PLJR 330

**Hon'ble Judges :** B.S. Sinha, J

**Bench :** Single Bench

**Advocate :** Angad Ojha, for the Appellant; Rewati Raman Saran and S.P. Dwivedi, for the Respondent

## Judgement

B.S. Sinha, J.—This application by the defendants in the suit is directed against the order dated the 7th October, 1977 passed in Title Appeal No. 15 of 1975 by Shri R.C. Jain, Subordinate Judge, Buxar, by this order the lower appellate court has held that the appeal has not abated u/s 4(c) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as the Consolidation Act). The relevant facts are that the plaintiff opposite party filed a suit for redemption of two mortgage bonds and delivery of possession as well as means profits. The suit was dismissed on 3.5.1976 against which the plaintiffs appealed which has been numbered as Title Appeal 15 of 1975. In this appeal on 27.9.1977, the defendants filed an application stating that the appeal had abated u/s 4(c) of the Consolidation Act, as the village in which the lands were situate has been subject to a notification u/s 3(1) of the Consolidation Act. By the impugned order the learned Subordinate Judge has held that the appeal has not abated.

2. Mr. Angad Ojha in support of this application has urged that in view of the wide terms in which Section 4(c) of the Consolidation Act is stated; the suit has abated. For this submission, learned counsel relied upon two decisions. It is un-

doubted]y true that Section 4(c) is pouched in very wide terms and proceedings in respect of declaration of rights or interest in any land lying in the area in which consolidation proceedings have started stand abated. In the case of (1) Ram Adhar Singh Vs. Ramroop Singh and Others, dealing with the scope of Section 5 of the U.P. Consolidation of Holdings Act 1953 (as amended, by U.P. Act 21 of 1966) the Supreme Court observed that the expressions ""every suit and proceeding in respect of declaration of rights or interest in any lands"" are comprehensive enough to take in suits for possession of land, because before a claim for possession is accepted, the court will have necessarily to adjudicate upon the right or interest of the plaintiff, in respect of the disputed property taking into account the claim of the opposite party. This decision was relied upon by a Bench of this court in the case of (2) Bijali Thakur and Others Vs. Rameshwar Thakur and Others, where it was held that Section 4(c) of the Consolidation Act is in very wide, terms and the reliefs of possession and means profits amount to a declaration of the right of interest in land on the basis of which the prayer is made. Therefore such suits would abate.

3. From what I have stated above, the submission of Mr. Ojha that the present case suing a suit for redemption and possession, will be corrected to Section 4(c) to be plausible and attractive. However, on a closer scrutiny the submission cannot be sustained in the instant case.

4. In the case before me the specific case of the plaintiffs, i.e. opposite parties, here was that their suit for redemption was only maintainable on a declaration that an auction sale on 5.3.1915 with regard to the suit land had been obtained by fraud. In other words, the plaintiff's case was that their suit for redemption of the mortgage and for delivery of possession could succeed on the "declaration that an auction sale held with regard to the suit laud in 1915 was an act of fraud.

5. In the case of (3) Gorakh Nath Dube Vs. Hari Narain Singh and Others, it was pointed out that there is distinction between cases where a document is wholly or partially invalid so that it can be disregarded by any court or authority and one where it has to be actually set aside before it can cease to have legal effect. Therefore; an alienation made in excess of power to transfer would be to the extent of the power, invalid which by implication would be a dispute involving claim to rights and interest in land. It was, however pointed out that where there is a document the legal effect of which can only be taken away by setting aside or by cancelling it, it call be said that the consolidation authorities have no powers to cancel the deed and therefore, it must be held to be binding on them so long as it is not cancelled by a court having the power to caned it.

6. In the Full Bench Case (4) C.W.J.C. No. 1361 of 1977 Ramkrit Singh and Others Vs. The State of Bihar and Others, decided on 9-3-1979 in which the vires of Section 4(c) of the Consolidation Act fell for consideration it was observed by the learned Acting C.J. with whom the other two judges agreed, that suit abates not only in relation to dispute in relation to right in land" but also in relation to ancillary or dependent reliefs. The position, however, would be different where

independent relief or reliefs unconnected with the declaration and-determination of title to land are involved in a in a suit. Further in paragraph 16 of that judgment reference was made to Gorakh Nath Dube's (Supra) and it was observed as follows:--

It was, however, pointed out that there is a distinction between cases where a document is wholly or partially invalid so that it can be disregarded by any court of authority and one where it has to be actually set aside before it, can cease to have legal effect. The latter class of cases were held to be outside the scope of the provision relating to abatement of suits.

7. From what I have stated in the present case, the primary question which has fallen for consideration is whether the auction sale of 1915 was obtained by fraud or not. That sale would Stand so long as it is not declared to be bad by a competent civil court with power, as pointed out above, is not given to the consolidation authorities under the Consolidation Act.

8. Mr. Ojha being faced with the above two authorities urged that the present case was still, covered with regard to right or interest in any land, in as much as, such a right had accorded to a third person, namely, the auction purchaser. I am unable to see that this makes any distinction in principle. The question, as I have stated earlier, is whether the auction sale of 1915 was the result of fraud. That sale is binding so long as it is not declared to be fraudulent by a competent civil court and that cannot be a matter within the purview of the consolidation authorities. It follows therefore, that the learned Subordinate Judge was right in holding that the appeal has not abated.

9. Mr. Rewati Raman Saran appearing for the opposite party in supporting the impugned order had further urged that the consolidation authorities had no jurisdiction to go into a question with regard to a suit under order 34 of the Code of Civil Procedure, in as much as, that power is not given to the consolidation authorities u/s 37 of the Consolidation Act. The submission has to be stated to be rejected. Section 37B of the Consolidation Act provides that consolidation authorities when hearing a matter in dispute under the Act are vested with certain powers, rights and privileges as a civil court with regard to matters enumerated in that section. This section does not state the matters in dispute which the consolidation authorities can determine.

10. It was also contended by Mr. Saran that it was not a suit for possession of land, but a suit for redemption of mortgage bond. This submission also cannot be sustained because if the mortgage bond is redeemed; the plaintiffs will not get the relief unless after the redemption decree for possession of the land is passed in their favour. In that sense, therefore if it was only a suit for recovery of possession after redemption- of mortgage bond, then it would have been covered u/s 4(c) of the Consolidation Act. I have already, however stated that in the instant case, it is not covered u/s 4(c) of the Consolidation Act for the reasons given above. For the reasons stated above, this application is dismissed. There

will be no order as to costs.